



Maricopa County

Jack Sellers
Chairman, Board of Supervisors

301 West Jefferson Street
10th Floor
Phoenix, AZ 85003-2143
Phone: 602-506-1776
www.maricopa.gov

August 2, 2021

Dear Senators,

It is now August of 2021. The election of November 2020 is over. If you haven't figured out that the election in Maricopa County was free, fair, and accurate yet, I'm not sure you ever will. The reason you haven't finished your "audit" is because you hired people who have no experience and little understanding of how professional elections are run.

The Board has real work to do and little time to entertain this adventure in never-never land. Please finish whatever it is that you are doing and release whatever it is you are going to release. I am confident that our staff and volunteers ran the election as prescribed by federal and state law. There was no fraud, there wasn't an injection of ballots from Asia nor was there a satellite that beamed votes into our election equipment. It's time for all elected officials to tell the truth and stop encouraging conspiracies.

Release your report and be prepared to defend any accusations of misdeeds in court. It's time to move on.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Sellers", with a long, sweeping horizontal line extending to the right.

Jack Sellers
Chairman, Maricopa County Board of Supervisors



Maricopa County Attorney

Allister Adel

August 2, 2021

Karen Fann
Senate President
Fifty-fifth Legislature
1700 West Washington, Senate
Phoenix, Arizona 85007-2804
kfann@azleg.gov

SENT VIA EMAIL TO:
Kory Langhofer, Esq.
Counsel of Record for Senate President Fann
kory@statecraft.com

Re: Your July 26, 2021 legislative subpoena to the Board of Supervisors

Dear Senate President Fann,

On behalf of her client, the Maricopa Board of Supervisors, the County Attorney acknowledges receipt of your subpoena dated July 26, 2021. Without waiving the Objections noted at the conclusion of this letter, as well as reserving the right to raise additional Objections during the gathering of materials and the course of production, we hereby respond as follows:

1. "All reports, findings and other documents concerning any breach of the voter registration server, the Maricopa County Recorder's Office systems, or any other aspect of the Maricopa County elections systems at any time within six months of the November 3, 2020 general election"

The Board of Supervisors is not aware of any "breach", as stated above, occurring during this time period, or any other time period relevant to the November 3, 2020 election. The Board of Supervisors is aware of an incident in November 2020 wherein an individual programmatically accessed the County Recorder's website and gathered publicly available information for a short period of time. The Recorder's website is in no way connected to the air-gapped tabulation system in the secure room where ballots are counted. To the extent you are requesting records related to this incident, you recently made a public records request to both the Maricopa County Recorder and the Board of Supervisors requesting similar information. As always, the Board of Supervisors will comply with your public records request promptly consistent with Arizona law. We hereby request that you accept our response to your public records request in lieu of production pursuant to this subpoena.

The Board of Supervisors will not, however, provide responsive documents today, to the extent they exist and are subject to disclosure by law. One week's notice is not sufficient time to search for all potentially responsive materials. As the Senate has demonstrated in its interactions with American Oversight and *The Arizona Republic*, the gathering of correspondence and documents is a sizeable task that will take longer than one week, as the statute contemplates and the case law confirms. Further, on the same day you served these subpoenas, your representatives gave three days-notice to Maricopa County to pick up its over 2 million ballots from the Wesley Bolin building. And, then fewer than 24-hours prior to the scheduled retrieval of ballots, the representatives informed the county that the over 300 hundred central count tabulators ("ICP2 devices") in the Senate's possession would need to be retrieved as well. The auditors explained the urgency was the result of your lease ending on Saturday, July 31, 2021, although it is difficult to understand how they were not aware of this date sooner. Given this short notice, the same elections department staff who will be tasked with gathering the materials responsive to this item, were forced to dedicate nearly all of last week to planning for and efficiently retrieving these materials.

2. "All ballot envelopes received in connection with the November 3, 2020 general election, or digital images of the same."

Maricopa County already provided digital images of ballot envelopes used in the November 3, 2020 General Election. The County produced these items on April 22, 2021 on Ballot Pallet 46. If Cyber Ninjas have misplaced them or are unable to find them, please direct them to the 5-terabyte Lacie hard drive that includes the subfolder named AFFIDAVITS. If Cyber Ninjas are unable to find them there, the County can produce them again.

Alternatively, our client the Recorder is prepared to deliver to the Senate the nearly two million ballot envelopes he received in the November 3, 2020 election. However, he will not deliver those items until requested and until his office receives further confirmation that appropriate security measures are in place. We assume, as you informed us with respect to your previous subpoenas, the Senate does not have adequate facilities at 1700 West Washington Street, Phoenix, AZ 85007 to safely store the mail-in ballot envelopes of hundreds of thousands of Maricopa County voters.

3. "All user names, passwords, pins and/or security keys or tokens required to access, or otherwise relating to, any and all ballot tabulation devices used in connection with the November 3, 2020 general election in Maricopa County. This is specifically for all levels of access, including, but not limited to, administrator access or any other level of access required to access and print the configuration of the ICP2 devices. This request also includes any material that the County does not possess but which it has a right to access."

Since serving this subpoena, the Senate returned all the ICP2 devices used in the November 3, 2020 election to Maricopa County rendering this demand for production moot.

Maricopa County has already produced every responsive record in its custody and control. Maricopa County does not have passwords that allow for administrative access of the Dominion tabulation equipment, which is not needed to conduct elections. Those passwords are in the exclusive custody and control of Dominion Voting Systems, and the County has no right "to access" them.

4. "All Maricopa County registered voter records to date, with any and all change histories including but not limited to the following:

- **The field that was added, removed, or changed**
- **A timestamp (date and time) for the change**
- **Identifying information for the individual who made the change (internal employee ID and/or IP address)"**

The Board of Supervisors has no records responsive to this request. The voter registration database is under the statutory control of the Recorder.

Our office has spoken with our client, the Recorder, and confirmed he intends to work with Senate President Fann to produce documents responsive to the similar public records request you recently sent to his office.

5. "All routers used in connection with the November 3, 2020 general election, or virtual images of the same, and the public IP of each such router."

The Board of Supervisors will not produce its routers. Maricopa County repeatedly has addressed the significant security risks posed by producing its routers. Specifically, providing these routers puts sensitive, confidential data belonging to Maricopa County citizens – including social security numbers and protected health information -- at risk. Further, the Maricopa County Sheriff has explained that the production of the routers would render MCSO internal law enforcement communication infrastructure extremely vulnerable to hackers, be they criminal cartels, terrorists, or foreign powers. Likewise, it would compromise and damage intergovernmental relationships formed by multi-agency law enforcement task forces. The dismantling of the County's routers would also severely disrupt County operations and would cost the County millions of dollars.

We understand the Senate's interest in examining the routers relates to determining whether the tabulation equipment connected to the internet at any point during the November 2020 election. IT DID NOT. No routers have ever been connected to the tabulation equipment or the Election Management System. Two EAC-accredited, professional elections technology companies confirmed that fact. Their public reports are available at <https://www.maricopa.gov/5681/Elections-Equipment-Audit>. These audits confirmed Maricopa County uses an air-gapped system in its tabulation room, meaning the ballot counting equipment is never connected to the Internet and is completely separated from the Maricopa County network. The audits also confirmed there are no routers connected to the tabulation system and there never have been.

As we told you in our letter dated May 7, 2021, the Board of Supervisors will not produce the routers it uses for other county business.

However, should Cyber Ninjas wish to independently assess whether the tabulation equipment connected to the Internet, Maricopa County already provided numerous items that would enable them to make this determination. These items included:

- (1) Windows event logs
- (2) Precinct-based tabulator logs
- (3) Central Count tabulator logs
- (4) Election Management System workstations
- (5) Server logs
- (6) All of the Election Tabulation Equipment that was used in the November General Election.

Anyone with sufficient knowledge and understanding of elections is able to confirm, through a review of these logs or through an inspection of the tabulators, that the equipment was not connected to the internet and had no wifi devices installed.

Furthermore, the Maricopa County EMS is not, and never has been, connected to the Internet; therefore, nothing related to the EMS is on the routers. So, there is nothing to gain and far too much potential harm to risk removing all of the County's routers and producing them to the Senate's designees hired for the purpose of examining the Maricopa County EMS.

6. "All splunk logs, network logs, net flows, or similar data related with systems associated in any way with the administration of the November 3, 2020 general election, for the time period beginning 60 days before the election and ending 90 days after the election."

As addressed in response to Request #5, the County already provided Windows event logs, precinct-based tabulator logs, and server logs relating to the November 3, 2020 election. And, as previously addressed, the County will not

produce its router splunk logs for the same reasons it will not provide its routers. Production of the router splunk logs would, among other things, put sensitive and confidential information about Maricopa County citizens at risk and endanger the lives of law enforcement personnel.

OBJECTIONS

The Board of Supervisors notes the following initial Objections to the subpoena. It reserves its right to raise additional Objections and/or legal defenses to the subpoena.

1. The Board of Supervisors objects to this subpoena because it was issued while the Senate was out of session. It is not evident that a subpoena issued when the Senate is adjourned is lawful.

2. The Board of Supervisors objects to this subpoena because of its lack of adequate notice. A courtesy copy of the subpoena was emailed to our office on Friday, July 23, 2021, but was not served on the Board until Monday, July 26, 2021. The subpoena seeks production of a substantially large amount of records, which would be impracticable to produce on August 2, 2021 by 1:00 p.m.—a mere five business days after the subpoena was served. This is an unreasonably short period of time—especially considering (1) the Senate is not currently in session; and (2) is not anticipated to be in session again until January, 2022.

3. The Board of Supervisors objects to this subpoena to the extent that it is an abuse of process or designed merely to harass.

4. The Board of Supervisors objects to this subpoena to the extent that it is overbroad or unduly burdensome.

5. The Board of Supervisors objects to this subpoena to the extent that it seeks records already in the Senate's custody and control.

6. The Board of Supervisors objects to this subpoena to the extent that it seeks records in the custody and control of someone other than the Board of Supervisors.

7. The Board of Supervisors objects to this subpoena to the extent that it has been mooted by the actions of the Senate, Senate President Fann, Senator Petersen, or their designees.

8. The Board of Supervisors objects to this subpoena to the extent that it seeks records that are protected by the attorney-client privilege.

9. The Board of Supervisors objects to this subpoena to the extent that it seeks records that may not lawfully be produced.

10. The Board of Supervisors objects to this subpoena to the extent that it was not authorized by a vote of the Senate.

11. The Board of Supervisors objects to this subpoena to the extent that it, and the investigation it purports to support, has not been authorized by a vote of the Arizona Senate Committee with jurisdiction over government operations and elections.

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Sincerely,

A handwritten signature in black ink, reading "Thomas P. Liddy". The signature is written in a cursive style with a large, stylized "T" and "L".

Thomas P. Liddy
Civil Division Chief
Maricopa County Attorney's Office